



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-123640-15]

RIN 1545-BM86

Administration of Multiemployer Plan Participant Vote on an Approved Suspension of Benefits Under MPRA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Temporary regulations relating to the administration of a multiemployer plan participant vote on an approved suspension of benefits under the Multiemployer Pension Reform Act of 2014 (MPRA) are being issued in the Rules and Regulations section of this issue of the **Federal Register**. The text of those regulations also serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-123640-15), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington D.C. 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-123640-15), Courier's Desk, Internal

Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C., or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-123640-15).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, the Department of the Treasury MPRA guidance information line at (202) 622-1559; concerning submission of comments, and the previously-scheduled hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and approved under OMB control number 1545-2260.

The collection of information in the paragraphs of these proposed regulations that cross-reference the temporary regulations that are being published elsewhere in this issue of the **Federal Register** is required for sponsor of a multiemployer defined benefit plan in critical and declining status to satisfy the criteria with respect to the required vote of plan participants and other eligible voters following approval of the plan sponsor's application for a suspension of benefits.

Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP,

Washington, DC 20224. Comments on the collection of information should be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

For the paragraphs of the proposed regulations that cross-reference the temporary regulations:

Estimated total average annual reporting or recordkeeping burden: 56 hours.

Estimated average annual burden per recordkeeper: 2 hours.

Estimated number of recordkeepers: 28.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## **Background and Explanation of Provisions**

Section 432(e)(9) of the Internal Revenue Code (Code), as amended by the Multiemployer Pension Reform Act of 2014 (MPRA), permits plan sponsors of certain multiemployer plans to reduce the plan benefits payable to participants and beneficiaries (referred to as a “suspension of benefits”) if specified conditions are satisfied. Under section 432(e)(9)(H), no suspension of benefits may take effect prior to a vote of the participants of the plan with respect to the suspension. Section 432(e)(9)(H) requires that the vote be administered by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, within 30 days after approval of a suspension application.

On June 19, 2015, the Treasury Department and the Internal Revenue Service published temporary regulations (TD 9723) under section 432(e)(9) in the **Federal Register** (80 FR 35207) (June 2015 temporary regulations). The June 2015 temporary regulations provide general guidance regarding section 432(e)(9) and outline the requirements for a plan sponsor of a plan that is in critical and declining status to apply for a suspension of benefits and for the Treasury Department to begin processing such an application. A notice of proposed rulemaking cross-referencing the June 2015 temporary regulations (REG-102648-15) was also published in the same issue of the **Federal Register** (80 FR 35262) (June 2015 proposed regulations). Both the June

2015 temporary and proposed regulations reflect consideration of comments received in response to the Request for Information on Suspensions of Benefits under the Multiemployer Pension Reform Act of 2014 published in the **Federal Register** on February 18, 2015 (80 FR 8578).

A public hearing concerning the June 2015 proposed regulations is scheduled for September 10, 2015, beginning at 9:00 a.m. in the Amphitheater of the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Ave., NW, Washington, D.C. Persons who wish to present oral comments at that hearing regarding the June 2015 proposed regulations were required to submit written or electronic comments, including an outline of topics to be discussed, by August 18, 2015. Anyone who has submitted a timely request to speak at the September 10, 2015, hearing is also permitted to discuss these proposed regulations at that hearing (without submitting a separate request to discuss these proposed regulations at that hearing).

The June 2015 temporary and proposed regulations set forth many of the rules relating to the participant vote under section 432(e)(9)(H). However, neither the June 2015 temporary regulations nor the June 2015 proposed regulations provide detailed guidance on how the Treasury Department would administer the vote.

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** (August 2015 temporary regulations) amend the Income Tax Regulations (26 CFR part 1) relating to the previously reserved paragraph in the June 2015 temporary and proposed regulations regarding the participant vote required under section 432(e)(9)(H).

The August 2015 temporary regulations specify that a participant vote requires the completion of three steps. First, a package of ballot materials is distributed to eligible voters. Second, the eligible voters cast their votes and the votes are collected and tabulated. Third, the Treasury Department (in consultation with the PBGC and Labor Department) determines whether a majority of the eligible voters has voted to reject the proposed suspension. The August 2015 temporary regulations also provide guidance regarding the statement in opposition to the proposed suspension and allow for the publication of a model ballot. The text of the August 2015 temporary regulations also serves as the text of these proposed regulations.

### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In this case, the IRS and the Treasury Department believe that the regulations likely would not have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605. This certification is based on the fact that the number of small entities affected by this rule is unlikely to be substantial because it is unlikely that a substantial number of small multiemployer plans in critical and declining status will suspend benefits under section 432(e)(9). Pursuant to section

7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Request for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the Treasury Department and the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying at [www.regulations.gov](http://www.regulations.gov) or upon request. **Please Note:** All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

If requested in writing by any person who timely submits written comments on these proposed regulations, a public hearing will be scheduled on the contents of this document. Comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**. Please see the “Background and Explanation of Provisions” heading for information regarding a public hearing scheduled for September 10, 2015, concerning the June 2015 proposed regulations regarding the Suspension of Benefits under the Multiemployer Pension Reform Act of 2014, during which individuals

who have already requested to speak regarding those regulations may also address the substance of these proposed regulations.

## **Contact Information**

For general questions regarding these regulations, please contact the Department of the Treasury MPRA guidance information line at (202) 622-1559 (not a toll-free number). For information regarding a specific application for a suspension of benefits, please contact the Department of the Treasury at (202) 622-1534 (not a toll-free number).

### **List of Subjects in 26 CFR Part 1**

Income taxes, reporting and recordkeeping requirements.

## **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.432(e)(9)-1(h) is amended by revising paragraph (h)(2) and adding paragraphs (h)(3)(iv) and (v) to read as follows:

§1.432(e)(9)-1 Benefit suspensions for multiemployer plans in critical and declining status.

\* \* \* \* \*

(h) \* \* \*

(2) Participant vote. [The text of the proposed amendments to §1.432(e)(9)-1(h)(2) is the same as §1.432(e)(9)-1T(h)(2) published elsewhere in this issue of the



**Federal Register.]**

\* \* \* \* \*

(3) \* \* \*

(iv) Statement in opposition to the proposed suspension. [The text of the proposed amendments to §1.432(e)(9)-1(h)(3)(iv) is the same as §1.432(e)(9)-1T(h)(3)(iv) published elsewhere in this issue of the **Federal Register.**]

(v) Model ballot. [The text of the proposed amendments to §1.432(e)(9)-1(h)(3)(v) is the same as §1.432(e)(9)-1T(h)(3)(v) published elsewhere in this issue of the **Federal Register.**]

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John M. Dalrymple

Deputy Commissioner for Services and Enforcement.

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